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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,858	12/14/2000	Jackson B. Hester JR.	6295.N CN1	8319

7590 09/17/2004

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EXAMINER

COLEMAN, BRENDA LIBBY

ART UNIT

PAPER NUMBER

1624

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/736,858	HESTER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brenda Coleman	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 June 2004.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14, 16, 17, 22-25, 30-36 and 38-67 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-14, 16, 17, 22-25, 30-36, 38-46 and 67 is/are allowed.

6) Claim(s) 47-64 and 66 is/are rejected.

7) Claim(s) 65 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-14, 16, 17, 22-25, 30-36 and 38-67 are pending in the application.

This action is in response to applicants' amendment filed June 30, 2004. Claims 1, 46 and 47 were amended and claim 67 is newly added.

**Note: The applicants' are reminded of the manner of making amendments.**

37 CFR 1.121 Manner of making amendments in application.

(c) Claims. Amendment to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims in the amendment document will serve to replace all prior versions of the claims in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

**The following claims fail to properly identify the status of the claims:**

**claims 8, 9, 16, 53, 54 and 66.**

#### ***Response to Amendment***

Applicant's amendments filed June 30, 2004 have been fully considered with the following effect:

1. The applicant's amendments and arguments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled a) and b) of the last office action, which are hereby **withdrawn**. However, with regards to the 35 U.S.C. § 112, second

paragraph rejections labeled c) the applicant's amendments and remarks have been fully considered but they are not persuasive.

c) The applicants' stated that claim 47 has been amended to include a double bond to the nitrogen. However, the amendment to the structure of the B ring where the nitrogen atom is double bonded to the sulfur atom does not satisfy the valence of the ring which is intended to exhibit the stereochemistry. The structure of example 4 where the sulfur atom possess two + and the nitrogen and the oxygen atoms possess negative charges in formula (10).

Claims 47-64 and 66 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for reasons of record and stated above.

In view of the amendment dated June 30, 2004, the following new grounds of rejection apply:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 47-64 and 66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The following reason(s) apply:

a) Claim 47 and claims dependent thereon are vague and indefinite in that it is not known what is meant by the period which follows a semi-colon. It is not known what else is intended.

***Claim Objections***

3. Claim 65 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Allowable Subject Matter***

4. Claims 1-14, 16, 17, 22-25, 30-36, 38-46 and 67 are allowed. None of the prior art of record or a search in the pertinent art area teaches the compounds, compositions and method of use of the compounds of formula I as claimed herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached on 571-272-0674. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Brenda Coleman*  
Brenda Coleman  
Primary Examiner Art Unit 1624  
September 16, 2004